

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JULY 7, 2003

AMENDED IN SENATE JUNE 30, 2003

AMENDED IN ASSEMBLY MAY 19, 2003

AMENDED IN ASSEMBLY APRIL 29, 2003

AMENDED IN ASSEMBLY APRIL 9, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL**No. 828**

Introduced by Assembly Member Leno

February 20, 2003

An act to amend Sections 14299, 15210, and 15211 of, and to add Sections 14299.5, 14299.7, and 14299.9 to, the Elections Code, relating to election day procedures.

LEGISLATIVE COUNSEL'S DIGEST

AB 828, as amended, Leno. Elections: election day procedures.

Existing law requires an elections official to deliver additional ballots to a precinct that has an insufficient number of ballots.

This bill would require the elections official to additionally deliver provisional ballot envelopes, as necessary. The bill would require a precinct board that is unable to provide ballots to all voters on election day who are eligible to vote to authorize use of sample ballots in place of a ballot, and, in the event that the precinct board is unable to comply, would require the precinct board to ensure access to a sample ballot for reference and authorize votes to be cast in writing, as specified. The bill

would set forth requirements for counting votes cast by sample ballot and in writing. The bill would require every county utilizing a direct electronic voting system as the primary precinct voting system to establish and implement an alternative voting procedure for use in the event that the direct electronic voting system fails. *A county would be required to submit the alternative voting procedure to the Secretary of State for approval within 3 months after obtaining a direct electronic voting system or by July 1, 2004, whichever is later, and the Secretary of State's approval of the alternative voting procedure would be required before the procedure is implemented. Any changes to the alternative voting procedure would also require the Secretary of State's approval.* By placing these additional requirements on ~~the elections official officials and the precinct board boards~~, this bill would impose a state-mandated local program.

The bill would require, in the event that a precinct runs out of ballots, that an investigation be conducted by the Secretary of State and would require the Secretary of State to report the findings of the investigation, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) There are occasions when, either due to human error or
4 other circumstances, precincts utilizing punchcard, optical scan,
5 or other types of paper ballots for voting purposes can run out of
6 ballots.



(2) Although existing law requires additional ballots be supplied as soon as possible and that polling places stay open later, eligible voters, through no fault of their own, can still be disenfranchised when a precinct runs out of ballots.

(3) Allowing an eligible voter to use a sample ballot to cast his or her ballot, or, if necessary, to write his or her choices on a piece of paper, is an option of last resort intended to ensure that no eligible voter is deliberately or inadvertently disenfranchised should a precinct run out of ballots.

(b) The Legislature further finds and declares:

(1) Counties are increasingly purchasing or considering the purchase of direct electronic voting systems for precinct use.

(2) In addition to the extensive national and state testing these systems undergo during their certification for use in California, it is prudent that counties develop alternative voting procedures for use in the unforeseen and unanticipated event that all of the machines in a precinct fail.

SEC. 2. Section 14299 of the Elections Code is amended to read:

14299. If a precinct board is unable to furnish a ballot to a qualified voter, because there is an insufficient number of ballots at the precinct, the elections official shall deliver to the precinct additional ballots and provisional ballot envelopes as necessary to ensure that all eligible voters can cast their ballots by 10 p.m. on election day.

SEC. 3. Section 14299.5 is added to the Elections Code, to read:

14299.5. (a) Notwithstanding Sections 14102 and 14299, in the event that the precinct board is unable to provide a ballot to any voter entitled to vote who comes to the polls to exercise his or her right to vote on election day, the precinct board shall authorize official sample ballots, whether supplied by the precinct board or a voter, to be marked by the voter and used in the place of a ballot.

(b) If the precinct board is unable to comply with the requirement set forth in subdivision (a), the precinct board shall ensure that an eligible voter has access to a sample ballot for reference, paper, and pen, and shall allow the voter to cast his or her vote in writing.

(c) If the precinct board is unable to comply with the requirements set forth in subdivision (a) and subdivision (b), the

1 precinct board shall ensure that an eligible voter has access to a
2 sample ballot for reference and shall allow the voter to supply
3 paper and a pen to cast his or her vote in writing. *A slate mailer,*
4 *as defined by Section 82048.3 of the Government Code, or any*
5 *preprinted paper with the names of candidates or ballot measures*
6 *not supplied by the precinct board, may not be used in place of a*
7 *ballot.*

8 (d) A ballot cast pursuant to this section shall be *cast in a*
9 *polling place and* placed in a provisional ballot envelope to be
10 completed and signed by the voter.

11 (e) A ballot cast pursuant to this section shall be processed and
12 counted in accordance with Sections 15210 and 15211.

13 (f) In the event that a voter is casting his or her ballot in writing,
14 the precinct board shall direct the voter to write as clearly as
15 possible, and shall inform the voter that if the elections official
16 cannot determine the voter's intention during the canvass process,
17 the vote may not be counted.

18 SEC. 4. Section 14299.7 is added to the Elections Code, to
19 read:

20 14299.7. Every county utilizing a direct recording electronic
21 voting system as the primary precinct voting system shall establish
22 and implement an alternative voting procedure to be used in the
23 event that the direct recording electronic voting system fails. The
24 alternative voting ~~system~~ *procedure* shall be ~~developed~~ *submitted*
25 *to the Secretary of State within three months after a county obtains*
26 *a direct recording electronic voting system or by July 1, 2004,*
27 *whichever is later, and approved by the Secretary of State prior to*
28 *implementation. Any changes to the alternative voting procedure*
29 *shall also be approved by the Secretary of State.*

30 SEC. 5. Section 14299.9 is added to the Elections Code, to
31 read:

32 14299.9. (a) If a precinct runs out of ballots requiring a voter
33 to cast his or her vote pursuant to an alternative voting method as
34 set forth in Section 14299.5, the Secretary of State shall investigate
35 and report as follows:

36 (1) The investigation shall at a minimum determine all of the
37 following:

38 (A) The circumstances that resulted in the precinct running out
39 of ballots.

40 (B) Whether or not any voters were disenfranchised.

(C) Changes that can be made to prevent reoccurrence, including but not limited to, procedural and statutory changes.

(2) The report of the Secretary of State shall be forwarded to the Assembly Elections, Redistricting, and Constitutional Amendments Committee, or its successor, the Senate Elections and Reapportionment Committee, or its successor, and to the elections official for each county.

(b) In conducting the investigation, the Secretary of State shall confer, as necessary to prepare the report, with elections officials from other jurisdictions who possess experience in the day-to-day operations of conducting elections. The Secretary of State may confer with the ~~County District Attorney or City District Attorney~~ *county district attorney or city district attorney*, the Attorney General, or any other appropriate office, agency, or resource.

SEC. 6. Section 15210 of the Elections Code is amended to read:

15210. In preparing the voted ballots for processing, any ballot that is torn, bent, or otherwise defective shall be corrected so that every vote cast by the voter shall be counted by the automatic tabulating equipment. If necessary, a true duplicate copy of the defective ballot or any sample ballot or handwritten ballot cast pursuant to Section 14299.5 shall be made and substituted therefor, following the intention of the voter insofar as it can be ascertained from the defective ballot. All duplicate ballots shall be clearly labeled “duplicate,” and shall bear a serial number that shall be recorded on the damaged or defective ballot.

SEC. 7. Section 15211 of the Elections Code is amended to read:

15211. If paper ballots are used for absentee voting or pursuant to Section 14299.5, the canvass may be conducted in accordance with Chapter 1 (commencing with Section 15000), or the elections official may have a true duplicate copy of absentee voter paper ballots or ballots cast pursuant to Section 14299.5 made on punchcard ballots, following the intention of the voter insofar as it can be ascertained from the defective ballot, and that shall be verified in the presence of witnesses. After verification the punchcard ballots shall be counted in the same manner as other punchcard ballots.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this

1 act contains costs mandated by the state, reimbursement to local
2 agencies and school districts for those costs shall be made pursuant
3 to Part 7 (commencing with Section 17500) of Division 4 of Title
4 2 of the Government Code. If the statewide cost of the claim for
5 reimbursement does not exceed one million dollars (\$1,000,000),
6 reimbursement shall be made from the State Mandates Claims
7 Fund.

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